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CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

No. 590

TERM A. D. 1944.

IN THE MATTER

OF

ASSOCIATED GAS AND ELECTRIC COMPANY,
Debtor,

In Proceedings for the Reorganization of a Corporation Pursuant to Chapter X of the Bankruptcy Act.

—o—

IRVING ELIAS, MAX MENACHEN and MICHAEL MOISE, constituting the Protective Committee for the Holders of Convertible Obligations, Due 2002, etc., *et al.*,
Petitioners and Appellants Below,

AGAINST

STANLEY CLARKE, Trustee of ASSOCIATED GAS AND ELECTRIC COMPANY, Debtor, *et al.*,
Respondents and Appellees Below.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit, and Brief in Support Thereof.

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GLOSSARY.

Ageco—Associated Gas and Electric Company, Debtor.

Agecorp—Associated Gas and Electric Corporation, Debtor.

CCs—Convertible Certificates without fixed maturities.

CDCs—Convertible Debenture Certificates and Convertible Debenture Obligations without fixed maturities.

CICs—5½% Convertible Investment Certificates, due November 15, 1938.

COABs—Convertible Obligations, Series A and B, due 2002.

Elias Committee—Appellants Irving Elias, Max Menachen and Michael Moise, constituting the Protective Committee for the Holders of Convertible Obligations Due 2002, All Series (Exclusive of Those Holders Who acquired Same by Direct Exchange for Original Convertible Debenture Certificates or Convertible Debenture Obligations, Series F) of Associated Gas and Electric Company.

IB and NIB Scrip—Interest Bearing and Non-Interest Bearing Scrip.

Old COs—Convertible Obligations without fixed maturities.

Original Holders of COABs—Holders of COABs who obtained such securities in exchange for CDCs and still retain those securities.

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ASSOCIATED GAS AND ELECTRIC COMPANY,

Debtor,

In Proceedings for the Reorganization of a Corporation pursuant to Chapter X of the Bankruptcy Act.

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IRVING ELIAS, MAX MENACHEN and MICHAEL MOISE, constituting the Protective Committee for the Holders of Convertible Obligations, Due 2002, etc., *et al.*,

Petitioners and Appellants Below,

AGAINST

STANLEY CLARKE, Trustee of ASSOCIATED GAS AND ELECTRIC COMPANY, Debtor, *et al.*,

Respondents and Appellees Below.

—o—

Petition for Writ of Certiorari.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of Irving Elias, Max Menachen and Michael Moise, constituting the Protective Committee for the Holders of Convertible Obligations, Due 2002, All Series, (Exclusive of those Holders who acquired same by direct exchange for original Convertible Debenture Certificates or Convertible Debenture Obligations, Series F) of Associated Gas and Electric Company respectfully shows:

Summary Statement of the Matter Involved.*

Petitioners seek a review of the final determination of the United States Circuit Court of Appeals for the Second Circuit, which affirmed an order of the United States District Court for the Southern District of New York, entered on August 13, 1943, in proceedings under Chapter X of the Bankruptcy Act, for the reorganization of the Debtor, Associated Gas and Electric Company (AGECO)**. Petitioners constitute a Protective Committee for the Holders of Associated Gas and Electric Convertible Obligations Due 2002, Series A and Series B (except original holders of COABs who exchanged them for CDCs).

The order appealed from classified the holders of Convertible Obligations due 2002, all Series (except original holders of COABs who exchanged them for CDCs) and scrip as subordinate to general creditors other than holders of obligations convertible at AGECO's option into stock (897-898, 900)***.

On November 26, 1941, the Disrict Court entered a bar order requiring that proofs of claims against the Debtor, with certain exceptions not here material, should be filed on or before February 28, 1942, (3). Many proofs of claim were filed (4).

Among the claims filed were those of convertible obligation holders and scrip holders, each separately represented by appellants-petitioners committees.

Under date of March 24, 1942, the AGECO Trustee petitioned for an order determining the validity of some of those claims and dividing the claims into classes according to their nature (4). Objections to the types of claims enumerated in the Trustee's petition were there-

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*For the convenience of the Court, the Summary Statement of the Matter Involved is in all respects similar to that contained in the petition of the AGECO Scrip Committee, except for special references pertaining to the particular securities.

**A glossary of the abbreviations used herein precedes the petition.

***Numerical references are to record folios unless otherwise noted.

after filed by the Trustee and by various other parties (31-255).

On October 27, 1942, the District Court referred these claims and objections to Honorable Frederick E. Crane, as Special Master, "to hear the evidence on the issues raised by said claims and objections and to report his findings of fact and conclusions of law as to the validity, priorities and proper division into classes of said claims" (256-289). The Special Master held hearings at which evidence was taken (5) and, on March 31, 1943, filed his report, including his findings of fact and conclusions of law (586-789). The Special Master recommended, among others, that the COAB and Scrip claims should be classified as subordinate to general creditors.

The report thereupon came on for confirmation before the District Court and objections thereto were duly filed (6; 790-809).

Apart from certain claims which are not material to this petition, the relevant claimants treated in the Special Master's report fall into five types:

1. Holders of Convertible Debenture Certificates and Convertible Debenture Obligations without fixed maturities (CDCs).
2. Holders of Convertible Certificates (CCs) and Old Convertible Obligations (Old COs) without fixed maturities.
3. Holders of Convertible Obligations, Series A and B Due 2002 (COABs), or Preferred or Preference Stocks, who obtained their COABs or stock in exchange for CDCs, and who still hold the COABs or stock thus obtained (Original Holders of COABs).*

*We do not include in the phrase "Original Holders of COABs", persons who acquired their COABs otherwise than on an exchange of CDCs, even if they acquired their COABs directly from AGECO.

4. Other Holders of COABs or Preferred or Preference Stocks.

5. Holders of Interest Bearing and Non-Interest Bearing Scrip (IB and NIB Scrip).

At a hearing held on April 14, 1943, the Trustee of AGECO moved that the District Court pass only on certain parts of the Special Master's report, findings of fact and conclusions of law. It appeared in the District Court that a Plan of Compromise and a Plan of Reorganization had been proposed by the AGECO Trustee and AGECORP Trustees and that these Plans made some provisions for Types 1 and 3 (833-839). The order of the District Court dated August 13, 1943, only reviewed conclusions of law 5 and 6 of the Special Master's Report, and the findings of fact relating to those conclusions, and classified the types of claims represented by the petitioners-appellants as subordinate to general creditors of AGECO pursuant to the Bankruptcy Act, Sec. 197 (862; 892-904). The order confirmed certain parts of the Special Master's report but deferred consideration of those types of claims (Types 1 and 3) for which some provision had been made in the Plan of Compromise, and Plan of Reorganization and reserved jurisdiction to pass on the portions of the Special Master's Report relating to them (840-904).

No provision was made for Types 2, 4 and 5, in the proposed Plan of Compromise or the proposed Plan of Reorganization. The Debtor's financial condition is such that subordinate creditors will not participate in any Plan of Reorganization and they accordingly have been given no recognition in a plan recently proposed by the Trustee of AGECO and the Trustees of AGECORP (838-840), which Plan of Compromise and Plan of Reorganization were approved by an order of the District Court

dated September 12, 1944, pursuant to Section 144 of the Bankruptcy Act.

Inasmuch as no provision was made for Types 2, 4 and 5 in the approved Plan of Compromise and Plan of Reorganization, any decision with respect to the fairness of these plans is necessarily dependent, therefore, upon a proper judicial determination that the claimants represented by petitioners are subordinate creditors. The District Court recognized that it was not possible to determine *favorably* the rights of these claimants without an adjudication of the status of the CDCs and the original holders of COABs but the District Court believed that *adverse* determinations could be made on uncontested findings of fact of the Special Master without consideration of the entire record and without adjudicating the status of the CDCs and the original holders of COABs. Accordingly, the District Court proceeded to a determination of the claimants of Types 2, 4 and 5, held that they were subordinate to general creditors, and entered an order so classifying them (839-862; 892-904). The District Court did not consider the remaining findings and conclusions of the Special Master but *assumed* that the issues therein involved would be resolved in favor of appellants (843). The District Court passed only upon those findings of fact and conclusions of law of the Special Master that were relevant to this classification and adopted them with minor modifications (897-903). The findings of fact thus adopted by the District Court are set forth in Appendix C to the opinion of the District Court (874-891).

The effect of the order appealed from is to divide the COABs into two different classes.

Class 1. Holders of COABs Due 2002, Series A and B, which had been issued in exchange for CDCs and which remain in the hands of the persons to whom they were originally issued or their personal representatives.

This class participates in the limited funds of the Debtor (or in the Plan of Compromise and Reorganization of the Debtor).

Class 2. Holders of Convertible Obligations Due 2002, Series A and B, which were in the hands of persons other than the original holders of CDCs who had exchanged them for COABs; this class includes transferees of persons who had originally held CDCs or persons who had exchanged them for CCs, Old COs or for cash. This class does not participate in the limited funds of the Debtor and has been excluded by the Court order appealed from.

The petitioners-appellants represent the second class of COABs described hereinbefore as Type 4.

Most of the COABs were issued by the Debtor in exchange for CDCs (751). On May 31, 1932, there were outstanding in the hands of the public, CDCs in the amount of $36,333,539 (306). On January 10, 1940, there were CDCs outstanding which had not been surrendered in the sum of $3,808,527 (333-334). The CDCs, CCs and old COs were all by their terms convertible at the *company's option* except under certain conditions, into specified classes of its preferred or preference stocks.

The CDCs, CCs and old COs were all purportedly debt securities of AGECO. The CCs and old COs, however, contained subordination clauses substantially like the one that is in the COABs and the IB and NIB scrip (874). The essential difference between the CDCs and the COABs is that the COABs contain a subordination clause whereas the CDCs do not. The subordination clause in the COABs (877-881; 511-516) provides in part as follows:

> "It is the intent hereof that this Obligation and all other Obligations of this issue shall be subordinate to the following (hereinafter called 'Senior

Obligations'), namely: all bonds, debentures and other indebtedness of the Company and of any successor corporation, now or hereafter created and outstanding, except (1) the Obligations of this issue and (2) indebtedness or Obligations convertible at the option of the Company into stock of the Company of any class or subordinated by their terms to other indebtedness or obligations of the Company."

The subordination clause in the IB and NIB scrip is substantially the same (888; 554-557).

The District Court held, in approving the Plans of Reorganization and Compromise of AGECO that FIOs (Fixed Interest Obligations) unconditionally payable as to both principal and interest on specified dates issued pursuant to indentures with Corporate Trustees, were general unsubordinated debt of AGECO. The District Court likewise held that CICs (Convertible Investment Certificates) unconditionally payable as to both principal and interest on specified dates, were likewise senior or general unsubordinated debt of AGECO. The CICs, however, by their terms were convertible at the *option of the company* into preferred stock of the company (575).

The CDCs by their terms were not subordinate to other obligations of AGECO (703). The CDCs by their terms become due on the happening of certain specified events, to wit:

"(a) Default in the payment of interest;

(b) Adjudication of AGECO as insolvent and permanent Receivers appointed for its property;

(c) Becoming bankrupt and voluntary or involuntary petitions being filed;

(d) Upon the transfer of all or substantially all of its assets unless the acquiring company assumed the obligations of AGECO under the CDCs" (690-2).

Prior to 1931 AGECO experienced certain financial difficulties. In 1931 and 1932 AGECO became further involved in financial difficulties and the notorious Mr. Hobson began his financial manipulations, which resulted in his eventual conviction and imprisonment. On April 19, 1932, the COABs were issued pursuant to authority contained in resolutions adopted by the Board of Directors of AGECO (875).

In May of 1932, AGECO first notified holders of CDCs, CCs and old COs that AGECO was exercising its option to convert those securities into stock; at the same time AGECO offered the security holders an option to take the then newly authorized COABs in place of the stock into which they were purportedly being converted. Some security holders held onto their CDCs, CCs and old COs; some exchanged them for stock; the others, the vast majority, took COABs (876). It is estimated that the bulk of the CDCs in the approximate amount of $30,000,000 or more, were exchanged for COABs (751).

In 1936 and 1937 AGECO paid interest, in the form of IB and NIB scrip, to all holders of COABs, however issued or acquired.

Both the COABs and Scrip were assignable, and many of them were sold or transferred by their original holders (884; 890).

The principal amount of COABs outstanding on January 10, 1940, when the Debtor was adjudicated a bankrupt, was $48,846,284. Since January 10, 1940, the Trustee of AGECO has acquired and cancelled COABs in connection with a compromise of certain claims against Howard C. Hobson and others in the principal amount

of $6,756,440 leaving a balance outstanding in the hands of the public in the amount of $42,089,844 (323-324).

The basic contention was made in this litigation before the District Court that AGECO's conversion privileges with respect to the CDCs, CCs and old COs were invalid and that, even if valid, the options to convert were improperly exercised. These contentions are not material here.

The District Court did not rule on these contentions but assumed in favor of appellants that the exchanges of CDCs for COABs were invalid and that original holders of COABs have a right to rescind the transactions (843). The District Court held that persons who merely acquired the COABs by transfer from some other holder of the COABs without an express assignment of any cause of action for rescission, could not take advantage of the assumed invalidity of the CDC exchanges, whether or not the transferor had been a party to a CDC exchange (849-852).

The Special Master found in his Report that CDCs which were valid and outstanding, were *unsubordinated general debt* of AGECO and entitled to participate as such in the funds of AGECO (788). The Special Master also found that COABs by their terms *were not subordinate to CDCs* of any issue which was valid and outstanding inasmuch as the CDCs by their terms were convertible at the option of AGECO into stock of the Company (676). The CICs which were designated as senior or general unsubordinated debt of AGECO were likewise convertible at the option of the Company into stock (575).

The District Court however held that the subordination provisions in the COABs and scrip were valid and enforceable in bankruptcy (854-857). Accordingly an order was entered classifying the claims of all COABs (except original holders of COABs) and scrip, as subordinate to general creditors other than the holders of obli-

gations convertible at AGECO's option into stock (897-898; 900). This is the order which was affirmed by the Circuit Court of Appeals and which petitioners-appellants now seek to review.

This Court Has Jurisdiction.

The jurisdiction of this Court is invoked under subdivision (c) of Section 24 of the Bankruptcy Act, as enacted June 22, 1938.

The date of the entry of the order, judgment and decree of the Circuit Court of Appeals, sought to be reviewed, is July 14, 1944 (R. p. 337). This petition, presented within three months after the entry of the aforesaid order, is timely.

The opinion of the United States Circuit Court of Appeals for the Second Circuit is reported at 143 F. (2d) 640. The opinion is also printed in full in the Record (R. pp. 324-337). The opinion of the United States District Court for the Southern District of New York is reported at 53 F. Supp. 107. The opinion is also printed in full in the Record (R. pp. 271-297).

The Circuit Court of Appeals has in this case decided important substantive questions of general federal law which have not been and should be, settled by this Court and in a way probably untenable with the weight of authority (Supreme Court Rule 38, par. 5 [b]).

As stated by the Circuit Court of Appeals

> "the issue involves peculiarly interesting questions of priority and subordination of corporate bonds in that the District Court has made a distinction between original holders and transferees of certain bonds and has subordinated the claims of transferees to an extent which it has not been prepared to go with respect to the claims made by original holders of the same bonds" (R. p. 325).

The decision of the Circuit Court of Appeals sustaining the District Court order differentiating between the original holders of certain bonds and the transferees of the same bonds and permitting one to participate in the funds of the bankrupt and the other not to, is probably untenable and violates the Fifth Amendment to the Federal Constitution, in that it creates an arbitrary and intentional discrimination between creditors of equal rank in violation of the equal protection and due process clause of the Federal Constitution; the decision of the Circuit Court sustains a District Court order creating an unequal distribution between creditors of equal rank in an insolvent estate and hence involves an important question of federal law which has not been but should be settled by this Court (Supreme Court Rule 38, par. 5 [b]).

The decision of the Circuit Court of Appeals as to the validity and enforceability of subordination agreements in bankruptcy and its interpretation of Section 65-a of the Bankruptcy Act, particularly where the subordination agreements in question have been obtained without consideration, and through fraud and misrepresentation, likewise involves an important question of federal law which has not been but should be settled by this Court and is probably untenable and against the weight of authority (Supreme Court Rule 38, par. 5 [b]).

The decision of the Circuit Court of Appeals on the question of the legality and power of a corporation to reserve in its bonds an option to convert its bonds into preferred stock upon the fulfillment of certain conditions precedent, and on the question of whether such conditions were properly fulfilled prior to the exercise of said option, was improper, erroneous and departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision where the District Court assumed that the issues in-

volved would be decided in favor of appellants (843) and the respondents likewise assumed that the issues involved would be determined in favor of appellants. The Circuit Court of Appeals reviewed questions not presented by the Record. In view of the fact that these questions were not raised by the District Court order appealed from but were assumed in favor of appellants, the record on appeal did not contain all the evidence necessary for the proper determination of these questions, nor was there any burden on the part of the appellants to introduce evidence in the record on appeal which was not material to the issues presented on the appeal and which were specifically assumed in appellants' favor. The Circuit Court of Appeals, in seeking to determine questions on the merits which basically affect the rights of the appellants, but which were not presented on the record on appeal by both parties, clearly departed from the accepted and usual course of judicial proceeding so as to call for an exercise of this Court's power of supervision (Supreme Court Rule par. 5 [b]).

The decision of the Circuit Court of Appeals erroneously sustained the procedure and order of the District Court which confirmed only certain conclusions of law and findings of fact pertaining to appellants' substantive rights without disposing of other issues of fact and law equally necessary for the *full* adjudication of the rights and status of the appellants herein. The procedure of the District Court sanctioned by the Circuit Court of Appeals was erroneous and prejudicial to the rights of the appellants where the report of the Special Master was rendered on all the issues and the issues herein were indivisible. This unusual and novel procedure accounts for the necessary assumptions made by the District Court in appellants' favor of the undetermined findings of fact and conclusions of law. The Circuit Court of Appeals recognized the unfairness of this mode of procedure (R.

pp. 331-332) and attempted to remedy it by erroneously ruling on all the issues, even those not determined by the District Court, and hence not presented in the record on appeal (R. pp. 332-334). The Circuit Court of Appeals thus sanctioned a departure by the District Court from the accepted and usual course of judicial proceedings so as to call for an exercise of this Court's power of supervision (Supreme Court Rule 38, par. 5 [b]).

Questions Presented.

The questions presented herein involve important questions of both procedural and substantive law. It is contended that the procedure adopted by the District Court as well as the Circuit Court of Appeals exceeded their jurisdiction and departed substantially from the accepted and usual course of judicial proceedings. The substantive issue as stated by the Circuit Court of Appeals, " * * * involves peculiarily interesting questions of priority and subordination of corporate bonds * * * ". The following questions must be considered by this Court:

1. Did the Circuit Court of Appeals err and exceed its jurisdiction in determining issues assumed by the District Court in favor of appellants and not presented in the record on appeal?

2. Was the procedure adopted by the District Court, and sanctioned by the Circuit of Appeals, of determining only certain, but not all, of the issues pertaining to the COABs correct and proper or prejudicial to the rights of appellants herein?

3. Does the Bankruptcy Act permit different recognition or treatment for transferees of securities than is afforded original holders of the same securities?

4. Does a classification of creditors in bankruptcy, which differentiates between original holders of the Debtor's obligations and transferee holders of said obligations, constitute an unequal and discriminatory distribution of an insolvent estate and hence violate the Fifth Amendment of the Constitution in failing to provide equal protection of laws?

5. Assuming that creditors (holders of COABs) were induced by their debtor through fraud or mistake to agree to subordinate their debt to other creditors, without any additional consideration therefor, is the agreement to subordinate contained in these securities enforceable in a court of bankruptcy or equity?

6. Are the COABs by their terms subordinate to any issue of CDCs or 5½% CICs?

7. If the COABs are not subordinate to CDCs or CICs of any issue, which are valid and outstanding, are the COABs entitled to stand and share on a parity in the funds and reorganization of the debtor AGECO with the CDCs and CICs who participate and share as general creditors of AGECO.

8. Is the subordination clause contained in the COABs inconsistent and ambiguous and therefore void?

9. Is the New York law applicable to the rights of all assignees and transferees of COABs?

10. Do the subordination provisions and terms of the COABs make the COABs "illusory promises" so as to give their holders a cause of action against AGECO as general creditors?

Reasons Relied on for Allowance of the Writ.

1. The Circuit Court erred in approving the procedure of the District Court. The District Court exceeded its jurisdiction by passing upon only certain issues pertaining to the COABs and by assuming the other issues in the case to be in their favor. It was impossible to fully determine the rights of these claimants favorably without an adjudication of all the issues presented, although this would incidentally involve an adjudication of the status of the CDCs and the original holders of COABs who were participating in the Plan of Compromise and Reorganization. The District Court's opinion, that adverse determinations could be made against appellants on certain issues, without consideration of all the issues and the entire record, prejudices the rights of the appellants who were entitled to have all the substantive issues determined on their merits in one appeal. The procedure of the District Court, sanctioned by the Circuit Court of Appeals, in effect splits one appeal into several. It must be recognized that the effect of this ruling may be, that after argument of this case on the limited issues presented before this Court, if the contentions urged by the appellants are upheld, it will then first become necessary to go back to the District Court for a determination of the other issues and further appeals may then be taken to the Circuit Court of Appeals and thereafter possibly to this Court. This procedure is unquestionably prejudicial to the rights of appellants and only results in a multiplicity of legal proceedings.

2. The Circuit Court of Appeals erred and exceeded its jurisdiction by passing upon issues not presented by the record on appeal. The District Court determined that adverse findings could be made against the appellants on

certain issues, pertaining only to these appellants, without considering the entire record and without adjudicating the other issues involving the status of the CDCs and the original holders of COABs who participate in the Plan of Compromise and Reorganization of AGECO. This novel procedure accounts for the necessary assumptions made by the District Court in appellants' favor on the other undetermined issues pending before the District Court (R. 843; 897-903). The District Court did not determine the remaining findings and conclusions of the Special Master but assumed that the issues there involved would be resolved in favor of appellants. The Circuit Court of Appeals recognized the unfairness of this mode of procedure (R. p. 331) and erroneously attempted to remedy it by ruling on all the issues, even those not determined and still pending before the District Court. The Circuit Court of Appeals passed upon the question of the legality and power of a New York corporation to reserve in its bonds an option to convert its bonds into preferred stock upon the fulfillment of certain conditions precedent and, in addition, upon the further question whether the necessary conditions precedent were properly fulfilled by the Debtor prior to the purported exercise of such option. The record on appeal did not contain the evidence necessary for the proper determination of these questions, in view of the fact that these issues were not raised by the District Court order appealed from, but were assumed by the District Court in favor of appellants, nor was there any burden on the part of the appellants to introduce such evidence in the record on appeal, since it was the duty of the appellants to exclude from such record any evidence not material or relevant to the issues presented by this appeal. The Circuit Court of Appeals, in reviewing questions on their merits not presented by the record on appeal, basically prejudiced

the rights of the petitioners-appellants and hence so clearly departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

3. The substantive questions involved have a public aspect and are of genuine intrinsic public importance, which call for their most authoritative determination. The questions involved concern the administration by a federal court of the estate of an insolvent quasi-public company and its reorganization. The liquidation or reorganization of such large holding companies both by the federal courts and by the Securities and Exchange Commission, a quasi-judicial and administrative branch of our government, has become increasingly frequent and it may reasonably be assumed from past experience that such reorganizations will occur in the near future. It is essential in the public interest that the questions here presented be reviewed and finally be settled.

4. The District Court has made a distinction between original holders of certain bonds and transferees of the same bonds, and has subordinated the claims of transferees, to an extent which it has not been prepared to go with respect to the claims made by original holders of the same bonds. The District Court by its order created an arbitrary and intentional discrimination between creditors of equal rank and standing and an unequal and discriminatory distribution of an insolvent estate by a federal court charged with its liquidation or reorganization in violation of the due process and equal protection clause of the Federal Constitution as well as the Bankruptcy Act. This District Court order has been sustained by the Circuit Court of Appeals.

5. The decision of the Circuit Court of Appeals upholding the District Court order distinguishing between

original holders of such bonds and transferees of such holders and in permitting one group of such creditors to participate in the bankrupt estate and the other not to, violates the due process and equal protection clause of the Federal Constitution and is in conflict with the applicable decisions of this Court. The decision of the Circuit Court of Appeals violates the petitioners' rights as guaranteed by the Fifth Amendment of the Federal Constitution.

6. The Circuit Court of Appeals and the District Court disregarded the settled law and the hitherto well-established rules of administration and distribution of insolvent estates in permitting a distinction to be made between original holders and subsequent holders of the same bonds. The Circuit Court of Appeals has failed to enforce that settled law and those statutory requirements. Its decision in this proceeding creates erroneous and dangerous precedent likely to introduce confusion into the body of the law, which, in the interest of jurisprudence, should not be permitted to pass uncorrected.

7. The question of the validity and propriety of the discrimination herein practiced and the question whether its contravenes the due process and equal protection clause of the Federal Constitution and Bankruptcy Laws, have never been adjudicated by this Court, so far as our research indicates.

8. The question as to the validity and enforcibility of subordination agreements in bankruptcy under Section 65A of the Bankruptcy Act, particularly where the subordination agreements in question, as assumed by the record below, were obtained without consideration and through fraud and misrepresentation, has never been adjudicated by this Court, so far as our research indicates, and in-

volves an important question of federal law which has not been but should be settled by this Court.

9. The interests at stake and the number of persons affected are very substantial. Involved herein is the elimination, in the distribution of an estate, of claims of over $22,000,000 in principal amount. Involved are the rights of over 36,000 general creditors spread throughout our land who rightfully look to the courts for a fair and equitable administration and distribution of this insolvent estate. Nor is this merely a controversy between private interests in the usual sense, since the questions involved concern hundreds of thousands of investors who daily trade in these securities and others of similar character. It follows that the acts of the federal courts and administrative branches of the federal government who have the duty to supervise the liquidation or reorganization of such quasi-public corporations, shall not violate the United States Constitution and that the petitioners and those similarly situated shall be accorded every protection which the Constitution affords.

10. The public interest and administration of justice will be subserved by this Court's review and by the correction of the patent discrimination and injustice which petitioners believe to inhere in this proceeding.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Second Circuit, commanding that Court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings of the case, and that the said decree of the United States Circuit Court of Appeals, for the Second

Circuit, may be reversed by this Honorable Court, and that your petitioners may have such other, further and different relief in the premises as to this Honorable Court may seem just and proper, and your petitioners will ever pray.

Dated, New York, October 11, 1944.

IRVING ELIAS,
Chairman of the Protective Committee for Holders of Convertible Obligations Due 2002, et al., Petitioners.

HARRY O. LEVIN,

ABRAHAM MITNOVETZ,
Of Counsel.